From: NELSON Jeff [jeffn@subutil.com]
Sent: Wednesday, January 04, 2006 10:51 AM
To: Norman,Paul E - P; BPA Public Involvement
Cc: LINAHAN Bob; SCHMITT Bob; Ko,Tina G - PSW
Subject: SUB's comments Re: Draft DSI Contracts

Attachments: 2006_01_04 SUB's Comments Re DSI Contracts.pdf

Paul,

Please find the attached comments from Springfield Utility Board regarding BPA's draft prototype contracts to aluminum company DSIs.

I hope you had a happy holidays and great New Year.

<<2006_01_04 SUB's Comments Re DSI Contracts.pdf>>

Regards,

Jeff

Jeff Nelson
Power Resource Manager
Springfield Utility Board
Phone: (541) 744-3779
Fax: (541) 744-2263

SPRINGFIELD UTILITY BOARD

MAIN OFFICE 250 A Street, PO Box 300 Springfield, OR 97477-0077 Tel 541.746.8451 Fax 541.746.0230 TDD 541.744.3659 www.subutil.com

January 4, 2006

Paul Norman
Senior Vice President
Bonneville Power Administration
P.O. Box 3621
Portland, Oregon 97208-3621

Re: Proposed Draft Prototype Contract for DSI Customers (FY 2007-2011)

Dear Paul:

The Springfield Utility Board (SUB) appreciates this opportunity to comment on BPA's draft prototype contract for service to Bonneville Power Administration's Direct Service Industry (DSI) customers for the Fiscal Year 2007-2011 period.

SUB has four primary issues regarding the Draft DSI Contract. These issues are outlined below and further expanded upon later in these comments.

1) Annual benefits to aluminum companies should be halved on a pro-rata basis - from $59.8 million down to $29.9 million. This is consistent with the DSI ROD, in light of the June 2005 injunction and subsequent court actions related to impacts to the hydroelectric system (costs are in excess of $70 million for 2005 alone). SUB would also be supportive of reducing benefits down to zero.

2) If any benefits are provided, SUB supports providing financial benefits for the first three years. SUB prefers that the contracts extend financial benefits for the last two years without a provision for a power sale. However, if a power sale remains an option, SUB requests that:

> A) Section 4(g)(1) of the DSI Contracts should clarify that the sale of any power is subject to BPA Transmission RODs, BPA's Transmission Tariff and BPA TBL Business Practices to avoid any "super-preference" transmission rights given to DSIs for a sale of power under the DSI Contract.

B) BPA should retain the language regarding the structure of any power sale (BPA sells to the Utility, the Utility sells to the DSI). BPA should retain the prohibition of resale language in Section 13(b) and BPA should add language that the DSI is prohibited from reselling the power as well.

C) If BPA issues a final action, BPA should include a decision that in any future rate case when conducting the 7(b)(2) test or for determining the IP Rate no Surplus Sales under the contracts will be assumed.

3) BPA should wait until after the WP-07 rate proceeding to sign contracts.

4) BPA should do a better job communicating processes and providing information to customers.

In addition to the above issues, BPA requested input on a number of questions:

1) Does the Prototype conform to the decisions and policies contained in the June 30, ROD?

Given that the DSI ROD requires a review of the impact of the June 2005 injunction prior to offering of the contracts, offering the Prototype for signature at this time would be inconsistent with the DSI ROD.

2) Since service benefits are monetized, each aluminum company DSI may obtain such benefits only if it is operating at certain minimum levels, is the level of operating flexibility provided to the DSIs in the Prototype reasonable? Should DSIs have access to benefits at lower minimum operating levels than discussed in the ROD, or higher levels? Should BPA maintain the $59 million annual limit or should smelters be given additional flexibility to draw benefits early from future fiscal years?

SUB is concerned that BPA is selectively re-opening aspects of the DSI ROD. Such an approach appears arbitrary and it is unclear why BPA is re-visiting certain aspects that were finally decided in the ROD without revisiting all aspects of the ROD. SUB’s response is simple: BPA should not revisit those aspects of the ROD that were finally decided without revisiting the entire ROD. SUB’s responses to the questions are:

Is the operations flexibility in the Prototype reasonable? Yes

Should access to benefits be at lower or higher operating levels? No

Should BPA maintain the annual limit or give flexibility: The $59 million annual limit was not finally decided in the DSI ROD since it is subject to review of the impact of the June 2005 injunction. This limit should be reduced to $29.9 million and BPA should maintain the annual limit without any right to draw benefits early.

Annual Benefits To Aluminum Companies Should Be Reduced To $29.9 Million Or Less

The DSI ROD included a number of decisions including a section that states:

> "BPA will review its decision to supply 560 aMW of benefits at a $59 million capped cost to the aluminum companies for FY2007-2011 after the cost impact of the June 10, 2005, injunction becomes more clear and before final contracts with the DSIs are signed. A decision to reduce the amount of service benefits BPA will provide to the aluminum companies, up to and including a decision not to serve any aluminum smelter load, is possible."[1]

According to the "Federal Columbia River Power System Summer Spill 2005 After-Action Report" (October 31, 2005) filed by BPA and other action agencies, the June 2005 injunction that impacted 2005 summer spill resulted in $73.2 million to $74.5 million of lost energy value to the region[2].

In addition, BPA and the other action agencies filed a report entitled "Impacts of Proposed Columbia River Operations for 2006 Compared to 2004 FCRPS Biological Opinion" (November 23, 2005). This report cited costs of potential court related adjustments to river operations up to $347 million per year. Even the action agencies' proposal resulted in annual costs of $43 million to $90 million[3].

BPA should not expose a bulk of these costs only on to consumer-owned utilities. The DSI Contracts include an "Equivalent PF Rate" that is based upon the PF rate "including any CRAC or adjustments", however this substantially dilutes the DSI exposure to the cost of court related impacts to river operations. In addition, CRACs only trigger under certain financial conditions that can be avoided through better than expected surplus sales. In other words, without directly reducing the benefit level in the contract, BPA is shielding DSIs from exposure of increased fish costs through surplus sales revenues that would have otherwise gone to reduce the PF rate.

SUB is supportive of cutting benefits in half while recognizing that there is some (minor) exposure to aluminum companies due to an increase in any CRAC on the PF rate related to increased fish costs.

Because of the issues raised above, the annual benefits to aluminum companies should be reduced from $59.8 million to $29.9 million.

---

[1] Bonneville Power Administration's Service to Direct Service Industrial (DSI) Customers for Fiscal Years 2007-2011 ROD, page 26

[2] "Federal Columbia River Power System Summer Spill 2005 After-Action Report" (October 31, 2005), page 2 (Action Agencies include Bureau of Reclamation, Corps of Engineers, Bonneville Power Administration, and the National Marine Fisheries Service)

[3] Impacts of Proposed Columbia River Operations for 2006 Compared to 2004 FCRPS Biological Opinion" (November 23, 2005), page 3

The Provisions Related To Potentially Sell Power To The DSIs For The Last Two Years Of the Contract Should Be Eliminated.

The optional power sale is complicates the contract and should be eliminated. If the contract provisions related to selling power to the DSIs are not eliminated SUB would requests the following:

Surplus Power Issue A
DSI Contracts should clarify that the sale of any power is subject to BPA Transmission RODs, BPA's Transmission Tariff and BPA TBL Business Practices to avoid any "super-preference" transmission rights given to DSIs for a sale of power under the Draft DSI Contract. SUB suggests the following changes to section 4(g))(1) of the prototype:

(g) **Delivery**
(1) **Transmission Service for Surplus Firm Power**
This Agreement does not provide transmission services for, or include the delivery of, Surplus Firm Power by BPA to «U», or by «U» to «D». «D» shall be responsible for executing one or more wheeling agreements with a transmission supplier for the delivery of Surplus Firm Power (Wheeling Agreement). PBL and «D» agree to take such actions as may be necessary to facilitate the delivery of Surplus Firm Power to «D», consistent with the terms, notice, and the time limits contained in the Wheeling Agreement. Should the Wheeling Agreement be for services provided by the BPA Transmission Line, delivery shall be subject to BPA Records of Decision, BPA's Transmission Tariff and BPA's Transmission Business Line Business Practices. BPA shall not be obligated to provide transmission related services for Surplus Firm Power under this Agreement that it would not otherwise provide other transmission customers.

A case in point is the prohibition on any increase in Customer Served Load in the BPA Record of Decision for the current Transmission Rates. Firm delivery may be allowed under a DSIs existing transmission contract. However, should the Customer Served Load issue remain in place, shifting delivery to the local utility would likely result in either a non-firm delivery (since the utility could not increase Customer Served Load) or a utility (or DSI- depending on who is doing the requesting) being bumped back into the queue just like everyone else requesting new service. SUB's proposed language is intended to avoid a situation where a DSI contract would provide transmission benefits specifically to DSIs and potentially override BPA RODs or business practices.

Surplus Power Issue B
BPA should retain the language regarding the structure of any power sale (BPA sells to the Utility, the Utility sells to the DSI). BPA should retain the prohibition of resale language in Section 13(b) and BPA should add language that the DSI is prohibited from reselling the power as well.

SUB suggests the following edit to Section 13(b) of the contract:

13(b) Limitation on Resale
«U» shall not resell Surplus Firm Power, as defined in this Agreement, to any entity except «D». «D» shall not resell power purchased from «U» that «U» provides to «D» through the resale of Surplus Firm Power, as defined in this agreement, to any entity.

Surplus Power Issue C
If BPA issues a final action, BPA should include a decision that in any future rate case when conducting the 7(b)(2) test or for determining the IP Rate no Surplus Sales under the contracts will be assumed. Otherwise, BPA is setting itself up for multiple 7(b)(2) tests and IP rate scenarios in the next rate proceeding (perhaps the strongest reason for eliminating the optional Surplus Power language in its entirety).

BPA Should Wait Until After The WP-07 Rate Proceeding To Sign Contracts

BPA's November 28th letter requesting comments on the draft DSI contracts also outlined a plan to offer contracts to DSIs in Mid-February. This letter came as a surprise to SUB. SUB continuously asked our Account Executive when BPA would be presenting contracts for review and our AE said "next year" (2006). The accelerated timetable "out of the blue" revealed that there is a significant communication problem between AEs and BPA management.

Clarification of BPA testimony further confused the issue. It is SUB's understanding that an attorney representing a party to the case asked one BPA witness panel (policy level panel) whether they would move to strike Party testimony that linked DSI benefits to fish costs and the BPA attorney said "no". When the attorney representing a party to the case asked another BPA panel (the DSI panel) the same question, the BPA attorney (a different BPA attorney than the first panel) said "yes". There appears to be a substantial lack of clarity within BPA about the DSI process. SUB, for one, is extremely frustrated.

SUB has asked for information from BPA regarding the impacts to the hydro system due to court ordered actions and has been rejected on the grounds that the information is proprietary. BPA's economic analysis is a "black box" and BPA has done an inadequate job of providing customers with information.

In light of the above issues, SUB is not encouraged that BPA is apparently rushing to complete a reconsideration of benefits to aluminum companies in light of the costs of the court ruling on river operations.

While the aluminum companies might want to sign contracts sooner rather than later, rather than make a rushed decision, BPA should wait until the top-to-bottom cost review is completed before offering to sign contracts. BPA should wait until after the WP-07 rate case to offer contracts.

BPA Should Do A Better Job Communicating Processes And Providing Information To Customers.

As explained above, BPA generated quite a bit of confusion. SUB would appreciate better communication between BPA management and account executives on processes so that AEs can effectively communicate with customers. SUB would appreciate a more transparent process – particularly when there is potentially going to be a final action taken on behalf of BPA. SUB encourages BPA to be internally consistent so that customers don't get mixed signals.

SUB notes that the §9(e)(2) Northwest Power Act provides that a final action that is an outcome of this particular process (which is conducted without a hearing) is subject to Section 706 of Title 5 of the United States Code. Without going into the detail of what Section 706 of Title 5 of the United States Code states, a transparent process would help to meet Section 706 compliance.

Sincerely,

Jeff Nelson
Resource Manager

cc: Bob Linahan, Bob Schmitt, Springfield Utility Board
Tina Ko, Bonneville Power Administration